



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Lawrence H. Norton, Esq.
William A. Powers, Esq.
Venable LLP
575 Seventh Street, N.W.
Washington, D.C. 20004

JAN - 4 2017

RE: MUR 7072
Babulal Bera

Dear Messrs. Norton and Powers:

This letter replaces the letter from the Commission dated December 13, 2016, to correct the MUR number. On May 26, 2016, the Federal Election Commission notified your client, Babulal Bera, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, information supplied by you, and other information, the Commission, on December 6, 2016, voted to dismiss this matter. In addition, the Commission admonishes Babulal Bera for violations of 52 U.S.C. §§ 30116(a)(1)(A) and 30122, for which he pleaded guilty in federal court. Your client should take steps to ensure that this activity does not occur in the future. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Mark Allen / eip

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Babulal Bera

MUR: 7072

4 **I. INTRODUCTION**

5 The Complaint in this matter is based on a guilty plea filed in Federal District Court by
6 Babulal Bera, father of U.S. Representative Amerish "Ami" Bera, in which Babulal Bera
7 admitted making approximately \$270,000 in contributions in the names of about 90 other
8 individuals to Ami Bera for Congress (the "Committee") during the 2010 and 2012 election
9 cycles.¹ Babulal Bera acknowledges his guilty plea, but requests that the Commission dismiss
10 the matter as a matter of prosecutorial discretion.²

11 As discussed below, the criminal plea demonstrates that Babulal Bera knowingly and
12 willfully violated 52 U.S.C. §§ 30116(a) and 30122. In view of his guilty plea and sentencing to
13 a year in prison, however, and other circumstances set forth below, the Commission dismisses
14 the Complaint as to Babulal Bera pursuant to *Heckler v. Chaney*.³

15 **II. FACTUAL BACKGROUND**

16 Representative Ami Bera (CA-7) ran unsuccessfully for Congress in 2010, won his seat
17 in 2012, and was re-elected in 2014 and 2016. On May 10, 2016, Babulal Bera pleaded guilty to
18 violating 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by making contributions in the names of others
19 and making excessive contributions during the 2010 and 2012 election cycles.⁴ According to the

¹ Compl. at 1, Ex. A (May 23, 2016). Ami Bera for Congress is Ami Bera's principal campaign committee.

² Babulal Bera Supp. Resp. at 1 (June 30, 2016) ("Bera Supp. Resp.").

³ 470 U.S. 821 (1985).

⁴ Plea Agreement, *United States v. Bera*, No. 2:16-cr-00097 (E.D. Cal. May 10, 2016) ("Plea Agmt.").

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1 Factual Basis for Pleas, Babulal Bera reimbursed approximately 90 contributors who made more
2 than 130 contributions to the Committee.⁵

3 The Factual Basis for Pleas states that, during the 2010 election cycle, Babulal Bera made
4 the maximum allowable contribution to the Committee for the primary and general elections —
5 then a total of \$4,800 — between April 4, 2009, and May 4, 2009.⁶ He then “directly and
6 indirectly solicited relatives, friends and acquaintances to make the maximum allowable federal
7 campaign contribution [to the Committee], with the understanding that he would reimburse them
8 in whole or in part.”⁷ From approximately May 11, 2009, through at least August 20, 2010,
9 these individuals contributed a total of approximately \$225,326 to the Committee.⁸ Babulal Bera
10 provided full or partial refunds to these individuals totaling more than \$220,000.⁹

11 According to the Factual Basis for Pleas, Babulal Bera conducted a similar scheme
12 during the 2012 election cycle.¹⁰ On approximately January 5, 2011, Babulal Bera contributed
13 the maximum allowable amount for the primary and general elections — then \$5,000 — to the
14 Committee. Babulal Bera again solicited family, friends, and acquaintances to make the
15 maximum allowable contribution to the Committee with the understanding that he would
16 reimburse the conduits for their donations.¹¹ The plea agreement indicates that from at least
17 January 31, 2011, through at least December 5, 2011, these individuals contributed a total of

⁵ Plea Agmt. Ex. A (Factual Basis for Pleas).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

1 approximately \$43,400 to the Committee.¹² Between April 26, 2011, and at least June 9, 2012,
2 these individuals received full reimbursements for their contributions from Babulal Bera, which
3 were delivered either by Babulal Bera himself or through third parties working at his behest.¹³
4 The Factual Basis for Pleas indicates that at least some of the reimbursement checks were drawn
5 on Bera's business accounts.¹⁴

6 In his Response, Babulal Bera acknowledges his plea agreement, but argues that in light
7 of his taking "full responsibility for his conduct," the Commission should dismiss the Complaint
8 as a matter of prosecutorial discretion.¹⁵ He contends that his "acceptance of responsibility,
9 remorse, age, and health issues, along with his lack of prior experience making political
10 contributions" support dismissal.¹⁶

11 On August 18, 2016, Babulal Bera was sentenced to a prison term of one year and one
12 day, supervised release for a term of 36 months, and a criminal fine of \$100,000.¹⁷

13 III. LEGAL ANALYSIS

14 In the 2010 election cycle, the Act prohibited an individual from making contributions to
15 a candidate which, in the aggregate, exceeded \$2,400 per election.¹⁸ In the 2012 cycle, the
16 contribution limit was \$2,500 per election.¹⁹ The Act further provides that no person shall make
17 a contribution in the name of another or knowingly permit his name to be used to effect such a

12 *Id.*

13 Information ¶13, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. May 9, 2016)
("Information").

14 Plea Agmt. Ex. A.

15 Bera Supp. Resp. at 1.

16 *Id.* The Response notes that Babulal Bera is 83 years old. *Id.*

17 Judgment, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. Aug. 18, 2016).

18 52 U.S.C. § 30116(a)(1)(A).

19 *Id.* See 11 C.F.R. § 110.1(b)(1).

1 contribution, and that no person shall knowingly accept a contribution in the name of another.²⁰

2 This provision proscribes both “false name” contributions and “straw donor” or “conduit”
3 contributions.²¹

4 Babulal Bera admits in his plea agreement that he knowingly and willfully engaged in a
5 scheme to make excessive contributions in the names of others to his son’s campaign committee
6 during two successive election cycles.²² Specifically, he admits that after he reached his
7 individual contribution limit to the Committee for the 2010 and 2012 election cycles, he “directly
8 and indirectly” solicited approximately 90 other individuals to make contributions to the
9 Committee in their own names, with the promise that he would reimburse them for their
10 donations.²³ Bera also admits that he reimbursed his conduits, in whole or in part. In total, he
11 reimbursed more than \$220,000 in contributions to the Committee during the 2010 election cycle
12 and \$43,400 in contributions to the Committee during the 2012 election cycle. Accordingly,
13 Babulal Bera knowingly and willfully violated 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by
14 making excessive contributions in the names of others.

15 Although Bera acknowledges his guilt, he argues that the Commission should dismiss
16 these allegations as a matter of prosecutorial discretion, on the grounds of his age and that he has
17 “taken full responsibility for his conduct” and his contributions “were made out of a desire to
18 support his son’s congressional campaign, rather than with the corrupt purpose of obtaining a
19 quid pro quo benefit.”²⁴

²⁰ 52 U.S.C. § 30122.

²¹ 11 C.F.R. § 110.4(b); *United States v. O'Donnell*, 608 F.3d 546, 549, 553 (9th Cir. 2010).

²² See generally Information; Plea Agmt. Ex. A.

²³ *Id.*

²⁴ Bera Supp. Resp. at 1.

1 Babulal Bera has pleaded guilty to the same violation of the Act which the Commission
2 could pursue in civil enforcement. The Commission has at times elected to exercise its parallel
3 jurisdiction,²⁵ and it has also at times dismissed matters against respondents who have already
4 been found criminally liable for the same conduct.²⁶ The Commission pursued and conciliated
5 violations of a similar scope in MUR 6143 (Danielczyk), which involved \$198,691 in
6 contributions in the name of another.²⁷

7 The Commission recognizes the seriousness of Babulal Bera's violations of the Act in
8 this matter. Indeed, his contribution scheme appears to be among the largest considered by the
9 Commission.²⁸ Bera used approximately 90 conduits from all over the country who made
10 roughly 130 contributions totaling more than a quarter of a million dollars to one political
11 committee. This scheme lasted three years, spanning two separate election cycles. Furthermore,
12 Bera's overall record of contributions belies the Response's characterization of him as a
13 "political novice."²⁹ Since 2009, Babulal Bera has contributed \$106,300 to candidate
14 committees (excluding the contributions made through conduits), \$50,400 to joint fundraising
15 committees, and \$70,000 to independent expenditure-only committees.³⁰

²⁵ See, e.g., Conciliation Agreement, MUR 6465 (Junker); Conciliation Agreement, MUR 6162 (Sohn); Conciliation Agreement, MUR 6143 (Danielczyk); Conciliation Agreement, MUR 5758 (O'Donnell); Joint Conciliation Agreement, MUR 5666 (Wade).

²⁶ See Bera Supp. Resp. at 5-6 (citing MUR 6233 (Hsu); MUR 6232 (Gill); MUR 6231 (Marshall)).

²⁷ See Factual & Legal Analysis, MUR 6143.

²⁸ Lower dollar matters in which the Commission pursued respondents who had been criminally prosecuted include MUR 5758 (O'Donnell) (\$32,000) and MUR 5666 (Wade) (\$78,000).

²⁹ See Bera Supp. Resp. at 7.

³⁰ Search results for Babulal Bera's Individual Contributions, FEC, <http://docquery.fec.gov/cgi-bin/qind/>. Further, Bera's \$70,000 in contributions to super PACs — including \$50,000 to a super PAC in June 2012 — undermines his assertion that he was unsophisticated and uninformed about "alternative, lawful vehicles for providing unlimited support for his son's campaign." Bera Supp. Resp. at 7. And as to Bera's assertion that his conduct had no corrupting effect, the U.S. Supreme Court concluded in *Buckley v. Valeo* that large contributions from family members are not without risk. *Id.* at 7-8; *Buckley v. Valeo*, 424 U.S. 1, 51 n.59 (1976) ("Although the

1 The Commission, however, finds that these factors are outweighed by other
2 circumstances in this matter, namely, Babulal Bera's guilty plea, his one-year prison sentence
3 and \$100,000 criminal fine, and his advanced age. In addition, the statute of limitations on most
4 of the activity here has run.³¹ Under these circumstances, the Commission dismisses this case as
5 a matter of prosecutorial discretion under *Heckler v. Chaney*.³² Finally, the Commission
6 admonishes Babulal Bera for his knowing and willful violations of the Act's contribution limits
7 and prohibition on making contributions in the name of another. See 52 U.S.C. §§ 30116(a) and
8 30122.

risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.").

³¹ The statute of limitations has run on the entire \$220,000 in violation during the 2010 election cycle. As for the \$43,400 in violation from the 2012 election cycle, the plea materials provide a general range of dates and do not identify specific contributions, but it appears that a substantial portion of that activity is now also beyond the statute of limitations.

³² 470 U.S. 821 (1985).